

**REMARKS/ARGUMENTS**

Reconsideration of this application is respectfully requested. To this end, petition is hereby made for a three (3) month extension of time to respond to the outstanding Office Action of December 23, 2009. Although the fee for this extension is being submitted with this Amendment, the Commissioner is hereby authorized to charge any fee that should have been filed at this time to our Deposit Account No. 14-1140.

Claims 1-114 are pending in this application. Claims 15-34 and 36-114 have been withdrawn from consideration. Upon entry of this Amendment, claim 7 will be amended and new claims 115 and 116 will be added. Applicant notes that support for new dependent claims 115 and 116 can be found at least at page 13, lines 10-31 and page 2, line 26 of the present application.

The Examiner is thanked for indicating in the outstanding Office Action that objected to claim 7 but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Claim 7 has been so amended, and as such, should now be in condition for allowance.

In the outstanding Office Action, the Examiner rejected claims 1-4 and 8-13, under 35 U.S.C. §102(b), as being anticipated by Schulte (USPN 4,190,040). The Examiner also rejected claims 5, 6, 14, and 35, under 35 U.S.C. §103(a), as being unpatentable over Whalen *et al.* (USPN 5,562,598) and in view of Schulte. The Examiner's rejections are respectfully traversed.

Applicant contends that, in his rejection of claims 1-4 and 8-13 under §102(b) as being anticipated by Schulte (4,190,040), the Examiner appears to be viewing element 3 as a pump. A review of Schulte reveals, however, that element 3 is a housing for a pressure chamber, being, therefore, an implant but not a pump. Applicant notes that, nowhere in Schulte is it stated that the

dome shaped wall portion 8, 9, 10 of the housing 3 is displaceable. On the contrary, Schulte states in column 1, lines 14-15, and claim 8, that the housing 3 is substantially non-expandable, whereas the envelope is highly expandable. Thus, the wall portion 8, 9, 10 of the housing 3 does not move, even if the pressure in the housing is altered, as the movement takes place in the wall of the envelope. Thus, Applicant contends that Schulte shows two implants in the form of pressure reservoir chambers, puncture housing 3 and inflatable envelope 1, connected by a tube 2, see Schulte column 1, line 60-63, column 2, line 13-23, and claims 1 and 8, where one chamber is non-expandable and one chamber is expandable. Applicant also notes that Schulte also teaches that the pressure is periodically increased. See Schulte, column 2, line 18-23. Accordingly, Applicant contends that Schulte teaches away from arranging the dome shaped wall portion 8, 9, 10 of the housing 3 displaceable in relation to the base 13 of housing 3.

Thus, Applicant contends that claim 1 is not anticipated by Schulte, in that claim 1 is related to a pump for pumping hydraulic fluid to or from a hydraulically operable surgical implant, where the pump comprises a second wall portion displaceable relative to a first wall portion to change the volume of the chamber of the pump to pump the fluid between the chamber and the implant, and that hydraulic fluid may be added or withdrawn from the chamber. As such, Applicant also contends that dependent claims 2-4 and 8-13 are also not anticipated by Schulte.

With regard to the Examiner's rejection of claims 5, 6, 14, and 35 under §103(a) as being unpatentable over Whalen *et al.* in view of Schulte, Applicant notes that Whalen *et al.* shows a pump, but that, as mentioned above, Schulte does not show a pump. Applicant contends that a person of ordinary skill in the art having a patient's best interests in mind would not arrange Schulte in the form of a pump because, if the housing 3 in Schulte were to be compressed in the

same manner as the housing in Whalen *et al.*, either the nonexpendable housing 3, the tube 2 or the expandable envelope 1 in Schulte would break, causing leakage of fluid under the skin 4 of the patient, or the skin 4 of the patient would break due to the expansion of the expandable envelope 1, both results of which would not be advantageous to the patient. A person of ordinary skill in the art would thus not combine Schulte with a pump and thus not combine Schulte and Whalen *et al.*

As such, it is believed that all of the claims pending in the application, *i.e.*, claims 1-6, 8-14, 35 and new dependent claims 115 and 116, are now in condition for allowance, which action is earnestly solicited. If any issues remain in this application, the Examiner is urged to contact the undersigned at the telephone number listed below.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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